cluded in the Repair Bill (AB3). The evidence on Item 10 (bundle of books) was not satisfactory and is therefore rejected. Similarly with Item 6. Item 3 (jogging shoes) is rejected on the basis that it is not the property of the plaintiff but that of her husband.

Head (d) of the damages claim is rejected because it was her husband perhaps and not the plaintiff who could have suffered the loss.

There will therefore be judgment for the plaintiff in the sum of $8998.79 and costs on the High Court scale and interest at 8% from the date of the service of Writ until judgment.

Order accordingly.

Solicitors: *Hin Rai & Tan; Niru & Co.*

LIN SECURITIES (PTE) v. OSK & PARTNERS SDN. BHD.

[O.C.J. (Thean J.) March 25, 1987]

[Singapore – Suit No. 1338 of 1987]

Practice and Procedure – Winding up petition pending against plaintiffs – Action commenced by plaintiffs in Singapore and another by defendants in Malaysia – Whether "Singapore action" be stayed on ground that "Malaysian action" concerning same subject matter was pending – Companies Winding Up Rules 1969, Rule 163.

Company Law – Winding up petition pending against plaintiffs – Action commenced by plaintiffs in Singapore and another by defendants in Malaysia – Whether "Singapore action" be stayed on ground that Malaysian action concerning same subject matter was pending – Companies Winding Up Rules 1969, Rule 163.

The plaintiffs were a company incorporated in Singapore and at the material time carried on the business of a stockbroker in Singapore. The plaintiffs were under receivership and a winding up petition was pending against them The defendants, a company incorporated in Malaysia, were and are still carrying on, the business of a stockbroker at Kuala Lumpur.

On July 26, 1985, the plaintiffs and the defendants entered into a contract whereby the plaintiffs agreed to sell and the defendants agreed to purchase 1,500,000 shares in Sigma International Ltd. at S$2.90 per share.

On January 28, 1986 the plaintiffs informed the defendants that they would deliver 90,000 shares out of the 1,500,000 shares and they requested for payment of a sum of $261,000. On January 29, 1986, the plaintiffs delivered the said 90,000 shares but the defendants refused to take delivery and pay the said sum of $261,000. The plaintiffs alleged that they were ready and willing to deliver the balance of 1,410,000 shares due under the contract and that the defendant had declined to accept delivery and pay for the whole of the 1,500,000 shares and had thereby repudiated the said contract.

The plaintiffs therefore initiated the present proceedings ("Singapore Action") against the defendants claiming damages for breach of contract. However before the Singapore Action commenced the defendants had already initiated proceedings at Kuala Lumpur ("Malaysian Action").

Upon service of the notice of the writ of summons in the Singapore Action on the defendants, they entered a conditional appearance and on March 19, 1986 took out an application by way of summons-in-chambers for an order, *inter alia,* that all further proceedings in the Singapore Action be stayed under the inherent jurisdiction of the court on the ground that there is pending the Malaysian Action concerning the same subject matter. The application was heard by the Assistant Registrar who dismissed it with costs. The plaintiffs appealed.

Held, dismissing the appeal: on the evidence available a stay ought not to be granted.

[*Editorial Note:* This case is on appeal *vide* Civil Appeal No. 15 of 1987]

Case referred to:

(1) *The Abidin Daver* [1984] A.C. 398.

HIGH COURT.

Susan Kong (Miss) for the plaintiffs.

Y. M. Jumabhoy for the defendants.

Cur. Adv. Vult.

Thean J.: The plaintiffs are a company incorporated in Singapore and at the material time carried on the business of a stockbroker in Singapore. The plaintiffs are presently under receivership and a winding-up petition has been presented against them and is still pending. The defendants are a company incorporated in Malaysia and at the material time carried on, and are still carrying on, the business of a stockbroker at Kuala Lumpur.

On July 26, 1985, the plaintiffs and the defendants entered into a contract whereby the plaintiffs agreed to sell and the defendants agreed to purchase 1,500,000 shares in Sigma International Limited ("Sigma") at a price of S$2.90 per share, amounting in total to a sum of S$4,350,000. The contract was negotiated and concluded over the telephone between the representatives of the plaintiffs and the defendants, and thereafter they issued their

respective contract notes; the plaintiffs issued their contract note for the sale of the shares, and the defendants on their side issued their contract notes for the purchase thereof – the defendants issued 5 contract notes in respect of the transaction. It was a term of the contract, as alleged by the plaintiffs and apparently not disputed by the defendants, that delivery and payment of the shares would take place on January 29, 1986.

Sigma is a company incorporated in Singapore and its shares at the date of the contract were quoted and dealt with on The Stock Exchange of Singapore Limited and The Kuala Lumpur Stock Exchange; since then dealings in, and quotation of, the shares of Sigma have been suspended and are still being suspended on both the stock exchanges.

On January 28, 1986, the plaintiffs in a telex to the defendants informed the defendants that they would deliver 90,000 shares out of the 1,500,000 shares and requested for payment of a sum of S$261,000. Such partial delivery, according to the plaintiffs, was permitted under the by-laws of The Stock Exchange of Singapore Limited. On January 29, 1986, the plaintiffs delivered the said 90,000 shares and the defendants refused to take delivery thereof and pay the said sum of S$261,000. The plaintiffs alleged that they were ready and willing to deliver the balance of 1,410,000 shares due under the contract and that the defendants had declined to accept delivery and pay for the whole of the 1,500,000 shares and had thereby repudiated the said contract.

The plaintiffs therefore initiated the present proceedings ("Singapore Action") against the defendants, claiming damages for breach of contract and on February 5, 1986, applied for and obtained an order for issue of the writ of summons in this action against the defendants and for service of a notice of the writ on them at Kuala Lumpur. The defendants, however, were ahead of the plaintiffs in taking legal action; they had, prior to that date, initiated proceedings in Suit No. C. 22-16-86 in the High Court of Malaya at Kuala Lumpur ("Malaysian Action") and on January 22, 1986, obtained an order in the High Court for issue of a writ of summons against the plaintiffs and service of a notice of the writ on the plaintiffs in Singapore. In the Malaysian Action the defendants seek a declaration that the contract made between the plaintiffs and the defendants is void on the ground that it is illegal and/or against public policy or in the alternative unenforceable.

Upon service of the notice of the writ of summons in the Singapore Action on the defendants, they entered a conditional appearance and on March 19, 1986, took out an application by way of summons-in-chambers, entered No. 3452 of 1986, for an order, *inter alia,* that all further proceedings in the Singapore Action be stayed under the inherent jurisdiction of the Court on the ground that there is pending the Malaysian Action concerning the same subject matter. The application was heard by the Assistant Registrar who dismissed it with costs. Against that decision this appeal was brought, and at the conclusion of the hearing I dismissed the appeal with costs.

It was contended by Mr. Jumabhoy on behalf of the defendants that the Malaysian Action had been initiated long before the Singapore Action was started, and as both actions concerned the same subject matter, the plaintiffs have to show that the court here is the convenient forum for resolution of the dispute. He submitted that a stay ought to be granted, unless the plaintiffs would be deprived, in the Malaysian Action, of some personal or juridical advantage that would be available to them only in the Singapore Action and was of such importance that it would be unjust to deprive the plaintiffs of it. In support, he relied on a decision of the House of Lords in *The Abidin Daver.*[1]

Miss Kong for the plaintiffs also relied on *The Abidin Daver (supra)* and submitted that in the circumstances of that case the Turkish Court, in which the legal proceedings were first initiated, was held to be the natural and appropriate forum for determining the matter in dispute, and accordingly the legal proceedings subsequently initiated in England were stayed. In this case, the High Court here, in her submission, is the natural and appropriate forum for determining the matter in dispute between the plaintiffs and the defendants. She further submitted that there would be considerable inconvenience to the plaintiffs if the matter is tried in the High Court at Kuala Lumpur. The plaintiffs are under receivership and a petition for their winding up has been presented to Court and is presently pending. Mr. Lin Tah Hwa, who at the time of the contract was the managing director of the plaintiffs and who negotiated and concluded the contract with the defendants, is presently being charged for an alleged criminal offence or offences and is on bail, and leave would have to be obtained for him to appear as a witness in the Malaysian Action. Undoubtedly he would be a material witness. There might be other witnesses in Singapore and the plaintiffs might have difficulty in

obtaining evidence from them if the case is tried at the High Court in Kuala Lumpur. Lastly, Miss Kong also pointed out that if the plaintiffs are wound up, the Court may, upon application, transfer the Singapore Action to the winding-up proceedings under Rule 163 of the Companies Winding Up Rules. This, if effected, would undoubtedly save costs.

As *The Abidin Daver* (*supra*) has been relied upon by both parties, and is clearly the authority in point, it is necessary to examine the case in some detail. In that case, there was a collision between a Turkish ship, the Abidin Daver, and a Cuban ship, the Las Mercedes, in the Bosphorus just outside the Turkish port but within the Turkish territorial waters. The Turkish ship was owned by a Turkish state corporation and at the time of the collision, she was on a voyage from Braila in Roumania to Iskenderun in Turkey. The Cuban ship was owned by a Cuban state corporation. Soon after the collision, the Turkish shipowners took prompt action in the District Court of Sariyer, the Turkish Court which exercised admiralty jurisdiction in the area, claiming damages for negligence in the navigation and management of the Cuban ship and had the ship arrested. The Cuban shipowners put up security to obtain the release of the ship and did not appear to have taken any further step in the Turkish action. Some three months later, after the commencement of the Turkish action, the Cuban shipowners took advantage of the presence in the English port of a sister ship of the Abidin Daver and commenced action in rem against the Turkish shipowners claiming damages for negligence in the collision at the Bosphorus and arrested that sister ship. The Turkish shipowners provided security for the release of the sister ship and, subsequently, applied for a stay of the English action. Sheen J, who heard the application, granted a stay on an undertaking that was offered by the Turkish shipowners to provide security for any cross-claim that the Cuban shipowners might decide to make in the Turkish action. On appeal to the Court of Appeal, his decision was reversed; however, on further appeal to the House of Lords, his decision was restored. Lord Diplock, in his speech drew attention to the factors pointing to Turkey as the forum in which justice could be done between the parties with less inconvenience and expense than in England and said, at pages 409 to 410:

> ". . . The collision took place in Turkish territorial waters between a Turkish ship manned by a Turkish crew, who reside in the vicinity of the Bosphorus, and a Cuban ship manned by a Cuban crew that had been piloted by a local Turkish pilot to the place at which she was brought to anchor at some time previous to the collision. Surveyors appointed by the Turkish court made a report on the collision within a few days of its occurrence and the damage to the Turkish ship was surveyed after the collision in a Turkish locality. So far as witnesses on the Turkish side are concerned, the convenience and economy of having the action tried in the nearby Turkish court of Admiralty jurisdiction as compared with having it tried in England are all one way; while so far as the convenience of witnesses on the Cuban side is concerned, there is little to choose between England and Turkey, except for a suggestion that the master and first officer of the Cuban ship might be able (though perhaps unwise) to give their evidence in the English language instead of in their native tongue, which is Spanish. In my view, as in that of Sheen J, not only was Turkey the country with which the matter litigated had the closest connections, but also the natural and appropriate forum from the point of view of convenience and expenses has, from the outset, been and still remains the District Court of Sariyer in Turkey, where proceedings were promptly started by the Turkish shipowners against the Cuban shipowners as defendants and were proceeding with all due dispatch when the writ in English action was issued by the Cuban shipowners."

Later, he made the following pronouncement, at pages 411 to 412:

> "Where a suit about a particular subject matter between a plaintiff and a defendant is already pending in a foreign court which is a natural and appropriate forum for the resolution of the dispute between them, and the defendant in the foreign suit seeks to institute as plaintiff an action in England about the same matter to which the person who is plaintiff in the foreign suit is made defendant, then the additional inconvenience and expense which must result from allowing two sets of legal proceedings to be pursued concurrently in two different countries where the same facts will be in issue and the testimony of the same witnesses required, can only be justified if the would-be plaintiff can establish objectively by cogent evidence that there is some personal or juridical advantage that would be available to him only in the English action that is of such importance that it would cause injustice to him to deprive him of it."

Plainly, the situation here is entirely different from that in *The Abidin Daver*. Here a contract was made orally between the representatives of the plaintiffs and the defendants over the telephone. The plaintiffs maintained that the contract was concluded subject to the rules and by-laws of The Stock Exchange of Singapore Limited and was governed by the laws of Singapore. The defendants on the other hand maintained that the contract was made subject to the rules of The Kuala Lumpur Stock Exchange and, presumably, they would also maintain that the contract was governed by the laws of Malaysia. On this point, I refrain from expressing any opinion whether the proper law governing the contract is the laws of Singapore or the laws of Malaysia, as obviously, this will be a

question to be decided at the trial of the action, whether here or in Kuala Lumpur. In this case, the considerations against the granting of a stay are these: the plaintiffs are under receivership and winding-up proceedings have been commenced against them. Mr. Lin Tah Hwa, who negotiated and concluded the contract on behalf of the plaintiffs, is being prosecuted for an alleged criminal offence or offences and is on bail; there may be or would be difficulty in obtaining leave for him to leave the country and proceed to Kuala Lumpur to give evidence in the Malaysian Action. It is obvious that his evidence is vital to the success of the plaintiffs. Eventually if a winding up order is made against the plaintiffs the Court may, thereafter on application, make an order under Rule 163 of the Companies Winding Up Rules 1969, for the Singapore Action to be transferred to the winding up proceedings, thus saving costs and expenses. Rule 163 provides:

"163. Where an order has been made for the winding up of a company the Judge shall have power to order the transfer to him of any action, cause or matter pending, brought or continued by or against the company."

On the material before me, I am not satisfied that a stay ought to be granted. In my opinion, the Assistant Registrar was right in refusing a stay.

Order accordingly.

Solicitors: *Shook Lin & Bok; Y.M. Jumabhoy & Co.;*

ISUME CO. PTE. LTD. v. HO SHING CONSTRUCTION CO. PTE. LTD.

[A.C.J. (Thean J.) June 22, 1987]

[Singapore Suit No. 4921 of 1986]

Practice and Procedure – Order 14 application – Claim for balance of money owed under contract – Appeal – Defence that wrong party was sued – Defence a sham.

This was an appeal against the decision of the Registrar given on March 9, 1987, in which on an Order 14 application, he gave judgment to the plaintiffs for the amount claimed together with interest and costs.

The plaintiffs claimed a sum of $52,278.28 representing the balance due from the defendants for work done under a contract made between the plaintiffs and the defendants and hire charges for certain machines let out on hire by the plaintiffs to the defendants.

There was no dispute on the amount due to the plaintiffs, but the defendants contended that the plaintiffs had sued a wrong party and that the defendants were not the party liable to pay such amount. The defendants claimed that the party liable was Shinju Pte. Ltd. The defendants submitted that the defendants were the main contractors of the Public Works Department for the whole project known as "Project Mindef SP114/83, Construction and Completion of Rigid And Flexible Pavement Associated Drainage System and Ancillary Works at Paya Lebar Airbase, Contract 1B, Singapore" and that they had subcontracted the works to Great Bambus (Pte.) Ltd., which in turn subcontracted the works to Shinju, and that it was Shinju which sub-contracted the works to the plaintiffs.

Held, dismissing the appeal: (1) the defendants' aforesaid submission referred to an internal matter between the defendants and its associate or affiliated companies. So far as the plaintiffs were concerned, they made the agreement of May 23, 1984, with the defendants and no one else;

(2) the defence was a sham and adopted for the purpose of delay and was hopelessly unsustainable.

APPEAL FROM REGISTRAR.

Lawrence Boo for the plaintiffs.
Tan See Swan for the defendants.

Cur. Adv. Vult.

Thean J.: This was an appeal against the decision of the Registrar given on March 9, 1987 in which, on an application under Order 14 of the Rules of Supreme Court, he gave judgment to the plaintiffs for the amount claimed together with interest and costs.

The plaintiffs claimed a sum of $52,278.28, representing the balance due from the defendants for work done under a contract made between the plaintiffs and the defendants and hire charges for certain machines let out on hire by the plaintiffs to the defendants. There was no dispute on the amount due to the plaintiffs, but the defendants contended that the plaintiffs had sued a wrong party and that the defendants were not the party liable to pay such amount. The party liable, they said, was Shinju Pte. Ltd. ("Shinju"). That was the only defence raised by the defendants and it was submitted on their behalf that that was a triable issue and the defendants ought to be given leave to defend. Having regard to the contemporaneous documents signed or executed on behalf of the plaintiffs and the defendants in relation to the transactions in question at the material times, I considered that such a defence must fail. Accordingly, after hearing the arguments advanced on behalf of the defendants and the plaintiffs respectively, I agreed with the decision of the learned Registrar and dismissed the appeal with costs.